

1 Laurence M. Rosen, Esq. (SBN 219683)  
2 **THE ROSEN LAW FIRM, P.A.**  
3 355 South Grand Avenue, Suite 2450  
4 Los Angeles, CA 90071  
5 Telephone: (213) 785-2610  
6 Facsimile: (213) 226-4684  
7 Email: lrosen@rosenlegal.com

8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 HANY MORSY, derivatively on behalf  
12 of MULLEN AUTOMOTIVE, INC.,

13 Plaintiff,

14 v.

15 DAVID MICHERY, IGNACIO  
16 NOVOA, MARY WINTER, KENT  
17 PUCKETT, MARK BETOR,  
18 WILLIAM MILTNER, JONATHAN  
19 NEW, JERRY ALBAN, and OLEG  
20 FIRER,

21 Defendants,

22 and

23 MULLEN AUTOMOTIVE, INC.,

24 Nominal Defendant.  
25

Case No.

**VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Hany Morsy (“Plaintiff”), by his undersigned attorneys, derivatively  
 2 and on behalf of Nominal Defendant Mullen Automotive, Inc.<sup>1</sup> (“Mullen” or the  
 3 “Company”), files this Verified Shareholder Derivative Complaint against  
 4 Individual Defendants David Michery, Ignacio Novoa, Mary Winter, Kent Puckett,  
 5 Mark Betor, William Miltner, Jonathan New, Jerry Alban, and Oleg Firer  
 6 (collectively, the “Individual Defendants” and with Mullen, “Defendants”) for  
 7 breaches of their fiduciary duties as directors and/or officers of Mullen, gross  
 8 mismanagement, abuse of control, waste of corporate assets, and violation of  
 9 Section 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”). As for his  
 10 complaint against Individual Defendants, Plaintiff alleges the following based upon  
 11 personal knowledge as to himself and his own acts, and information and belief as to  
 12 all other matters, based upon, among other things, the investigation conducted by  
 13 and through his attorneys, which included, among other things, a review of  
 14 Defendants’ public documents and announcements made by Defendants, United  
 15 States Securities and Exchange Commission (“SEC”) filings, wire and press  
 16 releases published by and regarding Mullen, news reports, securities analysts’  
 17 reports and advisories about the Company, the proceedings in the consolidated  
 18 action styled *In re Mullen Automotive, Inc. Securities Litigation*, Case No. 2:22-cv-  
 19 3026-DMG-AGR (N.D. Cal.) (the “Consolidated Securities Class Action”), and  
 20 information readily obtainable on the Internet. Plaintiff believes that substantial  
 21 evidentiary support will exist for the allegations set forth herein after a reasonable  
 22 opportunity for discovery.  
 23  
 24

---

25  
 26  
 27 <sup>1</sup> In November 2021, Mullen Technologies, Inc. (“Mullen Technologies”) and Net  
 28 Element Inc. (“Net Element”) closed a merger which resulted in Mullen Automotive,  
 Inc. (the “Merger”).

## **NATURE OF THE ACTION**

1  
2 1. This is a shareholder derivative action which seeks to remedy  
3 wrongdoing committed by Mullen’s directors and officers between June 15, 2020  
4 and April 6, 2022, inclusive (the “Relevant Period”).

5 2. Nominal Defendant Mullen is a Southern California-based automotive  
6 company building the next-generation of premium electric vehicles (“EVs”) that are  
7 affordable and built entirely in the United States. Nominal Defendant Mullen touts  
8 its end-to-end ecosystem that supports owners from test driving to financing and  
9 servicing through a unique hybrid dealership model wherein customers are  
10 supported through every aspect of EV ownership.

11 3. Throughout the Relevant Period, the Company was caused to issue  
12 false and/or misleading statements regarding its ability and timeline for production  
13 of vehicles, its deals with business partners such as Qiantu Motor Ltd. (“Qiantu”),  
14 its battery technology and capabilities, its ability to sell branded products, its due  
15 diligence into Mullen Technologies, Inc., and that the Dragonfly K50 was not solely  
16 delayed due to the COVID-19 pandemic.

17 4. On April 6, 2022, market analyst Hindenberg Research released a  
18 report regarding the Company entitled “Mullen Automotive: Yet Another Fast  
19 Talking EV Hustle” which detailed several alleged issues with the Company (the  
20 “Hindenburg Report”).

21 5. Mullen’s stock price declined upon these revelations. The loss of  
22 reputation and goodwill is severe as well.

## **JURISDICTION AND VENUE**

23 6. Diversity jurisdiction is conferred by 28 U.S.C. § 1332. Plaintiff and  
24 Individual Defendants are citizens of different states and the amount in controversy  
25 exceeds the sum or value of \$75,000, exclusive of interest and costs.  
26  
27  
28



1 2021, Mullen Technologies, Inc. (“Mullen Technologies”) underwent a merger with  
2 Net Element, Inc., (“Net Element”) and the Company changed its name to Mullen  
3 Automotive, Inc. (the “Merger”). The Company’s shares trade on the NASDAQ  
4 exchange under the ticker symbol “MULN.” Prior to the Merger, the Company’s  
5 shares traded under the ticker symbol “NETE.”

6 14. Defendant David Michery (“Michery”) has served as the Chief  
7 Executive Officer (“CEO”) and Chairman of the Board of Directors of the Company  
8 following the Merger. Prior to the Merger, Defendant Michery served as the CEO of  
9 Mullen Technologies. On information and belief, Defendant Michery is a resident  
10 of California.

11 15. Defendant Ignacio Novoa (“Novoa”) has served as a Director of the  
12 Company since July 1, 2022. Defendant Novoa and the Company entered into a one-  
13 year Consulting Agreement on January 12, 2022. On information and belief,  
14 Defendant Novoa is a resident of California.

15 16. Defendant Mary Winter (“Winter”) has served as a Director of the  
16 Company since the closing of the Merger and previously she served as a Director of  
17 Mullen Technologies since 2018. Defendant Winter currently serves as the Secretary  
18 of the Company and Board of Directors. Formerly, she was the Vice President of  
19 Operations for Mullen Technologies since 2014. On information and belief,  
20 Defendant Winter is a resident of California.

21 17. Defendant Kent Puckett (“Puckett”) has served as a Director of the  
22 Company since 2018, serving as the Audit Committee Chair during that time.  
23 Defendant Puckett served as a Director of Mullen Technologies’ since 2018, serving  
24 as the Audit Committee Chair during that time. Previously, he served as the Chief  
25 Financial Officer of Mullen Technologies from 2012 to 2018. Defendant Puckett is  
26 the Chair of the Compensation Committee and a member of the Audit and  
27  
28

1 Nominating and Governance committees. On information and belief, Defendant  
2 Puckett is a resident of California.

3 18. Defendant Mark Betor (“Betor”) has served as a Director of the  
4 Company since the closing of the Merger and previously served as a Director of  
5 Mullen Technologies since 2018, serving on the Compensation Committee of  
6 Mullen Technologies. Defendant Betor is also a member of the Audit and  
7 Compensation committees, and Chair of the Nominating and Governance  
8 Committee. On information and belief, Defendant Betor is a resident of California.

9 19. Defendant William Miltner (“Miltner”) has served as a Director of the  
10 Company since the closing of the Merger. Defendant Miltner is a member of the  
11 Nominating and Governance Committee. On information and belief, Defendant  
12 Miltner is a resident of California.

13 20. Defendant Jonathan New (“New”) served as a Director of the Company  
14 from the closing of the Merger until September 19, 2022. Defendant New was the  
15 Chair of the Audit Committee and a member of the Compensation Committee.  
16 Defendant New has served the Company’s Chief Financial Officer (“CFO”) since  
17 September 19, 2022. On information and belief, Defendant New is a resident of  
18 Florida.

19 21. Defendant Jerry Alban served as the Chief Operating Officer (“COO”)  
20 and a Director of the Company from the closing of the Merger until June 30, 2022.  
21 Defendant Alban held the same position at Mullen Technologies since June 2021.  
22 Prior to that position, he served as Chief Financial Officer at Mullen Technologies  
23 from April 2018 until November 2021. Defendant Alban also has served as an  
24 internal consultant for the Company since January 2018. On information and belief,  
25 Defendant Alban is a resident of California.  
26  
27  
28

1           22. Defendants Michery, Novoa, Winter, Puckett, Betor, Miltner, New, and  
2 Alban are collectively referred to herein as “Director Defendants.”

3           23. Defendant Oleg Firer (“Firer”) served as the CEO and Executive  
4 Director of the Company prior to the Merger. On information and belief, Defendant  
5 Firer is a resident of Florida.

6           24. The Director Defendants and Defendant Firer are collectively referred  
7 to herein as “Individual Defendants.” The Individual Defendants with Nominal  
8 Defendant Mullen are collectively referred to herein as “Defendants.”

9           **FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

10           25. By reason of their positions as officers, directors and/or fiduciaries of  
11 Mullen and because of their ability to control the business and corporate affairs of  
12 Mullen, the Individual Defendants owed Mullen and its shareholders fiduciary  
13 obligations of trust, loyalty, good faith, and due care, and were and are required to  
14 use their utmost ability to control and manage Mullen in a fair, just, honest, and  
15 equitable manner. The Individual Defendants were and are required to act in  
16 furtherance of the best interests of Mullen and its shareholders so as to benefit all  
17 shareholders equally.  
18

19           26. Each director and officer of the Company owes to Mullen and its  
20 shareholders the fiduciary duty to exercise good faith and diligence in the  
21 administration of the Company and in the use and preservation of its property and  
22 assets and the highest obligations of fair dealing.

23           27. The Individual Defendants, because of their positions of control and  
24 authority as directors and/or officers of Mullen, were able to and did, directly and/or  
25 indirectly, exercise control over the wrongful acts complained of herein.  
26  
27  
28



1           28. To discharge their duties, the officers and directors of Mullen were  
2 required to exercise reasonable and prudent supervision over the management,  
3 policies, controls, and operations of the Company.

4           29. Each Individual Defendant, by virtue of his or her position as a director  
5 and/or officer, owed to the Company and to its shareholders the highest fiduciary  
6 duties of loyalty, good faith, and the exercise of due care and diligence in the  
7 management and administration of the affairs of the Company, as well as in the use  
8 and preservation of its property and assets.

9           30. The conduct of the Individual Defendants complained of herein  
10 involves a knowing and culpable violation of their obligations as directors and/or  
11 officers of Mullen, the absence of good faith on their part, or a reckless disregard for  
12 their duties to the Company and its shareholders that the Individual Defendants were  
13 aware of posed a risk of serious injury to the Company.

14           31. Specifically, the Individual Defendants caused Mullen to issue false  
15 and misleading statements of material fact in the Company's public statements,  
16 including in its: June 15, 2020 press release entitled "Net Element Enters into a  
17 Letter of Intent to Merge with Electric Vehicle Company Mullen Technologies" (the  
18 "June 2020 Press Release"); December 15, 2020 press release entitled "NETE: Q3  
19 2020 Revenues Improve Despite Continued Shutdowns in NY and California" (the  
20 "December 2020 Press Release"); July 27, 2021 Proxy statement; November 15,  
21 2021 press release entitled "Mullen Automotive Announces It Now Owns Tunica,  
22 Mississippi, EV Assembly Plant Free and Clear" (the "November 2021 Press  
23 Release"); February 28, 2022 press release entitled "EV Manufacturer Mullen  
24 Announces Progress on Solid-State Polymer Battery Pack Development" (the  
25 "February 2022"); and tweet from March 17, 2022 (the "March 17, 2022 Tweet").  
26  
27  
28



1           32. The Individual Defendants' conduct, who were also officers and  
2 directors of the Company, has been ratified by the remaining Individual Defendants  
3 who collectively comprised Mullen's Board at relevant times. Accordingly, the  
4 Individual Defendants breached their fiduciary duties by knowingly or recklessly  
5 causing Mullen to issue false and misleading statements of material fact in the  
6 Company's statements relating to the Company and its prospects and failed to  
7 protect corporate assets.

8           33. As senior executive officers and/or directors of a publicly-traded  
9 company whose common stock was registered with the SEC pursuant to the  
10 Exchange Act and traded on the NASDAQ, the Individual Defendants had a duty to  
11 prevent the dissemination of inaccurate and untruthful information with respect to  
12 the Company's financial condition, performance, growth, operations, financial  
13 statements, business, products, management, earnings, internal controls, and present  
14 and future business prospects including potential purchases, so that the market price  
15 of Mullen's stock would be based upon truthful and accurate information.  
16 Accordingly, the Individual Defendants breached their fiduciary duties by  
17 knowingly or recklessly causing Mullen to make false and misleading statements of  
18 material fact in the Company's statements regarding the Merger and the Company's  
19 business, before and after closing.

21           34. To discharge their duties, the officers and directors of Mullen were  
22 required to exercise reasonable and prudent supervision over the management,  
23 policies, practices, and internal controls of the Company. By virtue of such duties,  
24 the officers and directors of Mullen were required to, among other things:

- 25           a. ensure that the Company was operated in a diligent, honest, and prudent  
26 manner in accordance with the laws and regulations of Delaware,  
27  
28

- 1 California, the United States, and pursuant to the Mullen's own Code of  
2 Business Conduct and Ethics and internal guidelines;
- 3 b. conduct the affairs of the Company in an efficient, business-like manner  
4 so as to make it possible to provide the highest quality performance of its  
5 business, to avoid wasting the Company's assets, and to maximize the  
6 value of the Company's stock;
- 7 c. remain informed as to how Mullen conducted its operations and plans, and,  
8 upon receipt of notice or information of imprudent or unsound conditions  
9 or practices, to make reasonable inquiry in connection therewith, and to  
10 take steps to correct such conditions or practices;
- 11 d. establish and maintain systematic and accurate records and reports of the  
12 business and internal affairs of Mullen and potential acquisitions,  
13 procedures for the reporting of the business and internal affairs to the  
14 Board and to periodically investigate, or cause independent investigation  
15 to be made of, said reports and records;
- 16 e. maintain and implement an adequate and functioning system of internal  
17 legal, financial, and management controls, such that Mullen's operations  
18 would comply with all laws and Mullen's statements filed with the SEC  
19 and disseminated to the public and the Company's shareholders would be  
20 accurate;
- 21 f. exercise reasonable control and supervision over the public statements  
22 made by the Company's officers and employees and any other reports or  
23 information that the Company was required by law to disseminate;
- 24 g. examine and evaluate any reports of examinations, audits, or other  
25 financial information concerning the affairs of the Company, including  
26 potential combinations and purchases, and to make full and accurate  
27  
28

1 disclosure of all material facts concerning, among other things, each of the  
2 subjects and duties set forth above; and

- 3 h. conduct the affairs of the Company in an efficient, business-like manner  
4 so as to make it possible to provide the highest quality performance of its  
5 business, to avoid wasting the Company's assets, and to maximize the  
6 value of the Company's stock.

7 35. Each of the Individual Defendants further owed to Mullen and the  
8 shareholders the duty of loyalty requiring that each favor Mullen's interest and that  
9 of its shareholders over their own while conducting the affairs of the Company and  
10 refrain from using their position, influence or knowledge of the affairs of the  
11 Company to gain personal advantage.

12 36. At all times relevant hereto, the Individual Defendants were the agents  
13 of each other and of Mullen and were at all times acting within the course and scope  
14 of such agency.

15 37. Because of their advisory, executive, managerial, and directorial  
16 positions with Mullen, each of the Individual Defendants had access to adverse, non-  
17 public information about the Company and potential purchases including that the  
18 Company was caused to issue false and/or misleading statements regarding its ability  
19 and timeline for production of vehicles, its deals with business partners such as  
20 Qiantu, its battery technology and capabilities, its ability to sell branded products,  
21 its due diligence into Mullen Technologies, and that the Dragonfly K50 was not  
22 solely delayed due to the COVID-19 pandemic.

23 38. The Individual Defendants, because of their positions of control and  
24 authority, were able to and did, directly or indirectly, exercise control over the  
25 wrongful acts complained of herein, as well as the contents of the various public  
26 statements issued by Mullen.  
27  
28

1           39. In addition, the Individual Defendants' actions and conduct has  
2 subjected the Company to at least the Consolidated Securities Class Action.  
3 Additionally, the Individual Defendants' actions caused the Company to issue false  
4 and/or misleading statements regarding its ability and timeline for production of  
5 vehicles, its deals with business partners such as Qiantu, its battery technology and  
6 capabilities, its ability to sell branded products, its due diligence into Mullen  
7 Technologies, and that the Dragonfly K50 was not solely delayed due to the COVID-  
8 19 pandemic. As a result, Mullen has expended, and will continue to expend,  
9 substantial sums of money to rectify the Individual Defendants' wrongdoing as well  
10 as lose potential business and goodwill.

11           **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

12           40. In committing the wrongful acts alleged herein, the Individual  
13 Defendants have pursued, or joined in the pursuit of, a common course of conduct,  
14 and have acted in concert with and conspired with one another in furtherance of their  
15 wrongdoing. The Individual Defendants caused the Company to conceal the true  
16 facts as alleged herein. The Individual Defendants further aided and abetted and/or  
17 assisted each other in breaching their respective duties.

18           41. During the Relevant Period, the Individual Defendants collectively and  
19 individually initiated a course of conduct of the Merger despite Mullen  
20 Technologies' issues regarding, among other things, its ability and timeline for  
21 production of vehicles, its deals with business partners such as Qiantu, its battery  
22 technology and capabilities, its ability to sell branded products, and that the  
23 Dragonfly K50 was not solely delayed due to the COVID-19 pandemic, and to issue  
24 false and misleading statements of material fact that failed to disclose and  
25 misrepresented adverse facts that were known to the Individual Defendants or were  
26 recklessly disregarded by them at the time they were made, including that the  
27  
28

1 Individual Defendants caused Mullen to make false and misleading statements of  
2 material fact in the Company's statements relating to the Merger before and after  
3 closing the deal and also its business. In furtherance of this plan, conspiracy, and  
4 course of conduct, Individual Defendants collectively and individually took the  
5 actions set forth herein.

6 42. The Individual Defendants engaged in a conspiracy, common  
7 enterprise, and/or common course of conduct. During this time, the Individual  
8 Defendants caused Mullen to make false and misleading statements of material fact  
9 in the Company's statements relating to the Merger and Mullen Technologies' and  
10 its own ability and timeline for production of vehicles, its deals with business  
11 partners such as Qiantu, its battery technology and capabilities, its ability to sell  
12 branded products, its due diligence into Mullen Technologies, and that the Dragonfly  
13 K50 was not solely delayed due to the COVID-19 pandemic  
14

15 43. The purpose and effect of the Individual Defendants' conspiracy,  
16 common enterprise, and/or common course of conduct was, among other things, to:  
17 (1) disguise and misrepresent the valuation of the Company; and (2) artificially  
18 inflate the Company stock price.

19 44. Because the actions described herein occurred under the authority of  
20 the Board, each of the Individual Defendants was a direct, necessary, and substantial  
21 participant in the conspiracy, common enterprise, and/or common course of conduct  
22 complained of herein.

23 45. Each of the Individual Defendants aided and abetted and rendered  
24 substantial assistance in the wrongs complained of herein. In taking such actions to  
25 substantially assist the commissions of the wrongdoing complained of herein, each  
26 Individual Defendant acted with actual or constructive knowledge of the primary  
27 wrongdoing, either took direct part in, or substantially assisted the accomplishment  
28

1 of that wrongdoing, and was or should have been aware of his overall contribution  
2 to and furtherance of the wrongdoing.

3 46. At all times relevant hereto, each of the Individual Defendants was the  
4 agent of each of the other Individual Defendants and of Mullen and was at all times  
5 acting within the course and scope of such agency.

### 6 **CODE OF BUSINESS CONDUCT AND ETHICS**

7 47. The conduct of all of the Company's officers, directors, and employees  
8 is governed by its Code of Business Conduct and Ethics (the "Code of Ethics").

9 48. The Code of Ethics confirms that the Company's officers, directors,  
10 and employees must follow applicable laws, rules, and regulations and engage in  
11 honest and ethical business conduct, stating in pertinent part:

#### 13 **Purpose**

14 *Mullen Technologies, Inc. (the "Company") is committed to*  
15 *promoting high standards of honest and ethical business conduct and*  
16 *compliance with applicable laws, rules, and regulations.* As part of  
17 this commitment, the Company has adopted this Code of Business  
18 Conduct and Ethics (this "Code"). The Company has adopted this Code  
19 to set expectations and provide guidance applicable to all members of  
20 the Company's Board of Directors (the "directors") and officers,  
21 employees, independent contractors, and consultants of the Company  
(all such persons for purposes of this Code, "employees").

22 \* \* \*

23 The Company expects all its directors, executives, managers, and other  
24 supervisory personnel to act with honesty and integrity, use due care  
25 and diligence in performing responsibilities to the Company, help foster  
26 a sense of commitment to this Code among its employees and foster a  
27 culture of fairness, honesty, and accountability within the Company.  
28 The Company also expects such personnel to ensure that the  
Company's agents and contractors conform to the standards of this  
Code when working on the Company's behalf.

\* \* \*

*Anyone who violates the standards in this Code will be subject to appropriate action, which, in certain circumstances, may include (a) for directors, removal from the Board, legal action or referral for criminal prosecution and (b) for employees (other than directors), termination of employment or service provider relationship for cause, legal action or referral for criminal prosecution.*

(Emphasis added.)

49. Following the Purpose section, the Code of Ethics' next section is entitled "LEGAL COMPLIANCE". The Legal Compliance subsection states the following in pertinent part:

*All employees must always obey the law while performing their duties to the Company.* The Company's success depends upon each employee operating within legal guidelines and cooperating with authorities. It is essential that all employees know and understand the legal and regulatory requirements that apply to the Company's business and to their specific area of responsibility. While an employee is not expected to have complete mastery of these laws, rules and regulations, employees are expected to be able to recognize situations that require consultation with others to determine the appropriate course of action. See Section 18 (Compliance Standards and Procedures) for a description of whom to contact with questions about legal compliance.

(Emphasis added.)

50. Following the Legal Compliance section, the Code of Ethics' next section is entitled "FINANCIAL INTEGRITY; PUBLIC REPORTING". The Financial Integrity; Public Reporting subsection states the following in pertinent part:

The Company strives to maintain integrity of the Company's records and public disclosure. *The Company's corporate and business records, including all supporting entries to the Company's books of*



1 *account, must be completed honestly, accurately, and*  
 2 *understandably.* The Company's records are important to investors and  
 3 creditors. *They serve as a basis for managing the Company's business*  
 4 *and are important in meeting the Company's obligations to business*  
 5 *partners, suppliers, vendors, creditors, employees, and others with*  
 6 *whom the Company does business.* The Company depends on the  
 7 books, records and accounts accurately and fairly reflecting, in  
 8 reasonable detail, the Company's assets, liabilities, revenues, costs and  
 9 expenses, as well as all transactions and changes in assets and liabilities.

10 To help ensure the integrity of the Company's records and public  
 11 disclosure, the Company requires that:

- no entry be made in the Company's books and records that is intentionally false or misleading.

12 \* \* \*

13 The Company's disclosure controls and procedures are designed to help  
 14 ensure that the Company's reports and documents filed with or  
 15 submitted to the U.S. Securities and Exchange Commission (the  
 16 "SEC") and other public disclosures are complete, fair, accurate, fairly  
 17 present the Company's financial condition and results of operations and  
 18 are timely and understandable. Employees who collect, provide, or  
 19 analyze information for or otherwise contribute in any way in preparing  
 20 or verifying these reports should be familiar with and adhere to all  
 21 disclosure controls and procedures and generally assist the Company in  
 22 producing financial disclosures that contain all the information about  
 23 the Company that is required by law and would be important to enable  
 24 investors to understand the Company's business and its attendant risks.  
 25 These controls and procedures include, but are not limited to, the  
 26 following:

- no employee may take or authorize any action that would cause the Company's financial records or financial disclosure to fail to comply with generally accepted accounting principles, the rules, and regulations of the SEC or other applicable laws, rules and regulations.
- all employees must cooperate fully with the Company's finance department, as well as the Company's independent auditors and legal counsel, respond to their questions with candor and provide them with

complete and accurate information to help ensure that the Company's books and records, as well as its reports filed with the SEC, are accurate and complete; and

• *no employee should knowingly make (or cause or encourage any other person to make) any false or misleading statement in any of the Company's reports filed with the SEC or knowingly omit (or cause or encourage any other person to omit) any information necessary to make the disclosure in any of such reports accurate in all material respects.*

*In connection with the preparation of the financial and other disclosures that the Company makes to the public, including by press release or filing a document with the SEC, directors must, in addition to complying with all applicable laws, rules and regulations, follow these guidelines:*

- *act honestly, ethically, and with integrity.*
- *comply with this Code.*
- *endeavor to ensure complete, fair, accurate, timely and understandable disclosure in the Company's filings with the SEC.*
- *raise questions and concerns regarding the Company's public disclosures when necessary and ensure that such questions and concerns are appropriately addressed.*
- *act in good faith in accordance with the director's business judgment, without misrepresenting material facts or allowing independent judgment to be subordinated by others; and*
- *comply with the Company's disclosure controls and procedures and internal controls over financial reporting.*

(Emphasis added.)

51. Following the Financial Integrity; Public Reporting section, the Code of Ethics' next section is entitled "CONDUCT OF SENIOR FINANCIAL EMPLOYEES". The Conduct if Senior Financial Employees subsection states the following in pertinent part:

Because of this special role, the Company requires that the Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer,

Corporate Controller, and any other persons performing similar functions (“Senior Financial Employees”):

1. Act with honesty and integrity and use due care and diligence in performing their

responsibilities to the Company. ...

3. Provide constituents with information that is accurate, complete, objective, relevant, timely and understandable, including information for inclusion in the Company’s submissions to governmental agencies or in public statements.

**4. *Comply with applicable laws, rules, and regulations of federal, state and local governments, and of any applicable public or private regulatory and listing authorities.***

5. Achieve responsible use of and control over all assets and resources entrusted to each Senior Financial Employee.

(Emphasis added.)

52. The Code of Ethics’ includes a subsection entitled “PROTECTION AND PROPER USE OF COMPANY ASSETS” which states the following in pertinent part:

All employees are expected to protect the Company’s assets and ensure their efficient use for legitimate business purposes. Theft, carelessness, and waste have a direct impact on the Company’s business and operating results. Company property, such as computer equipment, buildings, furniture and furnishings, office supplies, products, and inventories, should be used only for activities related to an employee’s employment, although incidental personal use is permitted. The Company retains the right to access, review, monitor and disclose any information transmitted, received, or stored using the Company’s electronic equipment, with or without an employee’s or third party’s knowledge, consent or approval. Any theft, misuse or suspected theft or misuse of the Company’s assets that becomes known to an employee must be immediately reported.

53. The Code of Ethics' includes a section entitled "ADMINISTRATIVE MATTERS" which confirms the Audit Chair is the point person for any issues for directors, stating the following in pertinent part:

## **8.2 COMPLIANCE STANDARDS AND PROCEDURES**

### **8.2.1 Compliance Resources**

The Company has an obligation to promote ethical behavior. Directors are encouraged to talk to the Audit Chair (or, in the case of the Audit Chair, the General Counsel) when in doubt about the application of any provision of this Code, and employees (other than directors) are encouraged to talk to their supervisors, managers and other appropriate personnel (including the General Counsel) when in doubt about the application of any provision of this Code.

\* \* \*

For directors, the Audit Chair (or, in the case of the Audit Chair, the General Counsel) is the most immediate resource for any matter related to this Code. For employees (other than directors), the supervisor of an employee is the most immediate resource for any matter related to this Code. Supervisors may have relevant information or may be able to refer questions to another appropriate source. There may, however, be times when an employee prefers not to go to the employee's supervisor. In these instances, employees should feel free to discuss their concern with the General Counsel. If an employee (other than a director) is uncomfortable speaking with the General Counsel because the General Counsel works in the employee's department or is one of the employee's supervisors, please contact the Audit Chair (for matters related to accounting, internal accounting, controls or auditing) or the chair of the Nominating & Corporate Governance Committee (the "Governance Committee") of the Board (for all other matters).

### **8.2.2 Clarifying Questions and Concerns; Reporting Possible Violations**

If a director encounters a situation or is considering a course of action and its appropriateness is unclear, the director should discuss the matter promptly with the Audit Chair (or, in the case of the Audit Chair, the General Counsel).

1  
2 If an employee encounters a situation or is considering a course of  
3 action and its appropriateness is unclear, the employee should discuss  
4 the matter promptly with the employee's supervisor or the General  
5 Counsel. Even the appearance of impropriety can be very damaging to  
6 the Company and should be avoided. If an employee is aware of a  
7 suspected or actual violation of this Code by others, it is the employee's  
8 responsibility to report it. Reporting procedures, including anonymous  
9 reporting procedures, are described in the Whistle-Blower Policy and  
10 Procedures available on the Company's internal website. Employees  
11 should raise questions or report potential violations of this Code  
12 without any fear of retaliation in any form; it is the Company's policy  
13 not to retaliate in such circumstances and the Company will take prompt  
14 disciplinary action, up to and including termination of employment or  
15 service provider relationship for cause, against any employee who  
16 retaliates against the reporting employee.

17 Supervisors must promptly report any complaints or observations of  
18 Code violations to the General Counsel. The General Counsel will  
19 investigate all reported possible Code violations promptly and with the  
20 highest degree of confidentiality that is possible under the specific  
21 circumstances. As needed, the General Counsel will consult with the  
22 Human Resources department, the Audit Committee, the Governance  
23 Committee and outside counsel, as appropriate.

24 If the investigation indicates that a violation of this Code has probably  
25 occurred, the Company will take such action as it believes to be  
26 appropriate under the circumstances. If the Company determines that  
27 an employee is responsible for a Code violation, the employee will be  
28 subject to disciplinary action up to, and including, termination of  
employment for cause and, in appropriate cases, civil action or referral  
for criminal prosecution. Appropriate action may also be taken to deter  
any future Code violations.

### **8.2.3 Responsibility for the Investigation**

*The Board is ultimately responsible for the investigation and resolution of all suspected or actual violations of this Code. Alleged violations of this Code will be investigated by the Audit Committee*

1 *and may result in discipline and other action at the discretion of the*  
 2 *Board upon recommendation of the Audit Committee, including,*  
 3 *where appropriate, removal from the Board.* The Board and the Audit  
 4 Committee will conduct their investigations with the highest degree of  
 5 confidentiality that is possible under the specific circumstances. The  
 6 Audit Chair, the Audit Committee or the General Counsel may consult  
 7 with other members of the Board and outside counsel as appropriate.

8 \* \* \*

#### 9 **8.4 ADMINISTRATION OF THIS CODE**

10 The Audit Committee is responsible for reviewing this Code as set forth  
 11 in the Audit Committee's charter and overseeing the establishment of  
 12 procedures for the prompt internal reporting of violations of this Code.  
 13 It may request reports from the Company's executive officers about the  
 14 implementation of this Code and may take any steps in connection with  
 15 the implementation of this Code as it deems necessary, subject to the  
 16 limitations set forth in this Code. The Audit Committee will have the  
 17 authority to review and assess this Code and recommend revisions for  
 18 approval by the Board. The Company will notify directors of any  
 19 material changes to this Code.

20 (Emphasis added.)

21 54. In violation of the Code of Ethics, the Individual Defendants (as  
 22 Mullen officers and/or as members of the Board) conducted little, if any, oversight  
 23 of the Merger, the Company's business, and consciously disregarded their duties to  
 24 monitor such dealings and protect corporate assets before and after closing the  
 25 Merger. The Individual Defendants' complete failure to perform their duties in good  
 26 faith resulted in misrepresentations to the investing public and the Company's  
 27 shareholders, and in engagement in conduct that was not in the best interest of the  
 28 Company.



## **THE AUDIT COMMITTEE**

55. The purpose of the Audit Committee is to assist the Board in fulfilling its oversight responsibility relating to the integrity of the Company's financial statements and financial reporting process and its system of internal accounting and financial controls, including the following functions:

- reviewing and approving the engagement of the independent registered public accounting firm to perform audit services and any permissible non-audit services for the Company;
- evaluating the performance of our independent registered public accounting firm and deciding whether to retain their services;
- monitoring the rotation of partners on the engagement team of our independent registered public accounting firm;
- reviewing our annual and quarterly financial statements and reports and discussing the statements and reports with our independent registered public accounting firm and management, including a review of disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";
- considering and approving or disapproving all related party transactions for the Company;
- reviewing, with our independent registered public accounting firm and management, significant issues that may arise regarding accounting principles and financial statement presentation, as well as matters concerning the scope, adequacy and effectiveness of our financial controls;
- conducting an annual assessment of the performance of the Audit Committee and its members, and the adequacy of its charter; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding financial controls, accounting or auditing matters.

## **THE AUDIT COMMITTEE CHARTER**

56. The Audit Committee Charter provides:

The responsibilities, duties and powers of the Audit Committee shall include:



## Review Procedures

1. Reviewing the reports of management, internal audit and the independent auditors concerning the design, implementation and maintenance of the Company's internal controls and procedures for financial reporting, including meeting periodically with the Company's management, internal audit and the independent auditors to review their assessment of the adequacy of such controls and to review before release the disclosure regarding such system of internal controls required under SEC rules to be contained in the Company's periodic filings and the attestations or reports by the independent auditors relating to such disclosure.

2. Reviewing and providing oversight of the external audit by:

a. reviewing the independent auditors' proposed audit scope and approach.

b. discussing with the Company's independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies, disagreements with management and any other required communications described in applicable accounting standards.

c. reviewing with the independent auditors the Company's critical accounting policies and practices, alternative treatments of financial information within generally accepted accounting principles that have been discussed with management and the treatment recommended by the independent auditors, and other material written communications between the independent auditors and management.

d. reviewing reports submitted to the audit committee by the independent auditors in accordance with applicable SEC requirements.

3. Reviewing and approving the annual internal audit project plan and any proposed changes and reviewing periodic reports summarizing results of the internal audit projects.

4. Reviewing and discussing with management earnings releases (with particular attention to any use of "pro forma" or "adjusted" non-GAAP

information), financial information and earnings guidance provided to the public, analysts and ratings agencies.

5. Reviewing and discussing with management and the independent auditors the annual audited financial statements and quarterly unaudited financial statements, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," prior to filing the Company's Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, respectively, with the SEC.

6. Recommending to the Board, if deemed appropriate, that the audited financial statements be included in the Company's Annual Report on Form 10-K, in accordance with the rules and regulations of the SEC.

7. Directing the Company's independent auditors to review before filing with the SEC the Company's interim financial statements included in Quarterly Reports on Form 10-Q, using professional standards and procedures for conducting such reviews.

## **THE INDIVIDUAL DEFENDANTS' MISCONDUCT**

### **FALSE AND MISLEADING STATEMENTS**

#### **DURING THE RELEVANT PERIOD**

##### *June 2020 Press Release*

57. On June 15, 2020, the Company issued a press release entitled "Net Element Enters into a Letter of Intent to Merge with Electric Vehicle Company Mullen Technologies" (the "June 2020 Press Release") which announced the merger between Net Element and Mullen Technologies and stated the following, in pertinent part, regarding Mullen Technologies' ability and timeline to produce and sell automobiles:

Net Element, Inc. (NASDAQ: NETE) ("Net Element" or the "Company"), a global technology and value-added solutions group that supports electronic payments acceptance in a multi-channel environment including point-of sale ("POS"), e-commerce and mobile devices, announced today that it has entered into a binding Letter of Intent to merge with privately-held Mullen Technologies, Inc. ("Mullen"), a Southern California-based electric vehicle company in a

1 stock-for-stock reverse merger in which Mullen's stockholders will  
 2 receive the majority of the outstanding stock in the post merger  
 3 Company.

4 ***Founded in 2014, Mullen expects to launch the Dragonfly K50, a***  
 5 ***luxury sports car, in the first half of 2021 through ICI (Independent***  
 6 ***Commercial Importers). Mullen currently has eight retail locations***  
 7 ***in California and one in Arizona.***

8 \* \* \*

9 According to Mullen, Mullen also owns several synergistic businesses  
 10 including: Mullen Auto Sales, a fast-growing series of automobile  
 11 dealerships and CarHub, a new and unique digital platform that  
 12 leverages Artificial Intelligence (AI) and offers a complete, easy-to-use  
 13 solution for buying, selling and owning a car. ... The company has 15  
 14 patents or patents pending related to its electric vehicles technology,  
 15 including nine in the United States.

16 ***The Dragonfly K50 has been featured at the New York International***  
 17 ***Auto Show on April 2019.*** The car also won the Governor's Choice  
 18 Award at the 2019 Balboa Bay Club's Classic Auto Show. The K50 has  
 19 also been the subject of stories in the Wall Street Journal, ABC News,  
 20 Autoweek, MotorTrend and Forbes, among many other publications. A  
 21 video of the launch of the car at the New York Auto Show can be seen  
 22 here. ... ***Due to the COVID-19 pandemic, Mullen pushed the targeted***  
 23 ***date for ICI release of the Dragonfly K50 for 2<sup>nd</sup> quarter of 2021.***

24 \* \* \*

25 According to Mullen, Mullen has created a different business model to  
 26 enter the EV market with core tenants that include: ***fast-to-market***,  
 27 highly efficient, ready and proven initial vehicle leveraging an existing  
 28 vehicle produced internationally and designed to U.S. market needs  
 (development reduced from 4 years to 17 months), and complemented  
 with a portfolio of competitively priced vehicles (three platforms) in  
 the fast-growing Electric SUV segment. According to Mullen, the first  
 SUV Mullen expects to introduce will be the MX-05, a mid-size luxury  
 SUV that will be featured as a battery electric vehicle.

[Image omitted.]

According to Mullen, *due to launch in Q3-Q4 of 2021, the MX-05 represents Mullen Automotive's entry into the full-electric and range extender, luxury SUV market.* The MX-05 is expected to fit the Mid-Size SUV segment. *Mullen projects for pre-launch to have several hundred units produced in 2021 and kickoff into full production in 2022.*

\* \* \*

#### About Mullen Technologies:

Mullen Technologies is a Southern California based *licensed electric vehicle manufacturer with international distribution* that operates in various verticals of businesses focusing in the automotive industry; Mullen Automotive, Mullen Energy, Mullen Auto Sales, Mullen Funding Corp., and Carhub. Each of these divisions provide Mullen with diversity of different products and services within the automotive industry. For more information, please visit: [www.mullenusa.com](http://www.mullenusa.com).

(Emphasis added.)

58. The June 2020 Press Release Defendant Michery stated the following regarding the Company's ability and timeline to produce and sell automobiles:

"We believe the timing of this merger is ideal for Mullen Technologies," said Mr. Michery. *"It comes on the preparation of our launch of the Dragonfly K50, which will be available in Q2 of 2021 and through our retail network in California and Arizona and the development of a new EV model, the MX-05 Sport Utility Vehicle, that we expect the start of production next year ..."*

(Emphasis added.)

59. The June 2020 Press Release also stated the following regarding the Company's dealings with other companies:

1 Founded in 2014, *Mullen expects to launch the Dragonfly K50, a*  
 2 *luxury sports car, in the first half of 2021 through ICI* (Independent  
 3 Commercial Importers). Mullen currently has eight retail locations in  
 4 California and one in Arizona.

5 \* \* \*

6 *Mullen is launching this car in conjunction with a cooperation*  
 7 *agreement with Qiantu Motor*, a wholly-owned subsidiary of CH-  
 8 Auto, a leading automotive design and manufacturing company in  
 9 China.

10 (Emphasis added.)

11 60. The June 2020 Press Release also stated the following regarding  
 12 Mullen's battery technology and capabilities: "In addition, becoming public at this  
 13 time *should allow us to accelerate the development of our unique battery*  
 14 *technology which I nonflammable, puncture proof, capable of maintaining full*  
 15 *capabilities after 500,000 cycles, and is synthetic, requiring no mining of natural*  
 16 *resources.*" (Emphasis added.)

17 61. The June 2020 Press Release also quoted Defendant Firer stating the  
 18 following, in pertinent part, regarding Net Element's due diligence into Mullen  
 19 Technologies:

20 "We feel, *after considering an array of strategic alternatives, that the*  
 21 *agreement with Mullen provides our shareholders with the most*  
 22 *compelling opportunity,*" said Oleg Firer, Net Element's Chairman and  
 23 Chief Executive Officer. "*We conducted an extensive search of*  
 24 *companies that have disruptive technologies, and believe that Mullen*  
 25 *represents the best path forward.* We expect that the merger with Mullen  
 26 will create a new path forward that should reward our long-time  
 27 shareholders."

28 (Emphasis added.)

62. The June 2020 Press Release is false and misleading regarding the Company's ability and timeline for production of vehicles, its deals with business partners such as Qiantu, its battery technology and capabilities, its ability to sell branded products, its lack of proper due diligence, and that the Dragonfly K50 was not solely delayed due to the COVID-19 pandemic.

*December 2020 Press Release*

63. On December 15, 2020, the Company issued a press release entitled "NETE: Q3 2020 Revenues Improve Despite Continued Shutdowns in NY and California" which reported the following regarding its due diligence into Mullen Technologies and Mullen Technologies' ability and timeline to produce and sell automobiles:

**Update on Mullen Technologies Transaction**

*Net Element is still diligently working on completing the transaction with Mullen Technologies. Mullen is still in process of an audit and the S-4 document is being drafted.* We expect to see it filed by year-end.

Mullen Technologies itself has been progressing on its plans to sell and produce electric vehicles in the US. It started on construction of its pilot manufacturing facility in October and started also taking pre-orders on its \$55,000 MX-05 fully electric SUV then. It is repurposing its high voltage battery R&D center as a pilot facility for its line of SUVs. The construction is planned for completion by April 2021 and we have no information that that timeline has changed. *There the MX-05 SUVs will be assembled to be delivered to customers by the second quarter of 2022.* The facility is designed to assemble as many as a thousand SUVs annually with other models possible later. The company said it plans to hire 100 people to assemble the SUV, the battery, conduct R&D, and provide warehousing. Once completed the plant will build prototypes that will we used to get government approval and certification, a process that should take 16 months. After that, the company could begin deliveries to consumers. *Customers can also pre-order the imported Dragonfly K50 super sports car from Mullen* [sic]



1                   **About Mullen Technologies:**

2                   Mullen Technologies is a Southern California-based *licensed vehicle*  
3                   *manufacturer* that operates in various verticals of the businesses,  
4                   focusing in the automotive industry: Mullen Automotive, Mullen  
5                   Energy, Mullen Auto Sales, Mullen Funding Corp. and CarHub. Each  
6                   of these divisions provide Mullen with diversity of different products  
7                   and services within the automotive industry. For more information,  
8                   please visit: [www.MullenUSA.com](http://www.MullenUSA.com).

9                   (Emphasis added.)

10                  64.     The December 2020 Press Release is false and misleading regarding  
11                  the Company's ability and timeline for production of vehicles, its deals with  
12                  business partners such as Qiantu, its battery technology and capabilities, its ability  
13                  to sell branded products, its lack of proper due diligence, and that the Dragonfly  
14                  K50 was not solely delayed due to the COVID-19 pandemic.

15                  *July 27, 2021 Proxy Statement*

16                  65.     On July 27, 2021, the Company filed with the SEC a proxy statement  
17                  on Schedule 14A pursuant to Section 14(a) of the Exchange Act, which contained  
18                  material misstatements and omissions.<sup>2</sup> The Proxy Statement was filed in  
19                  connection with a special meeting of shareholders to vote on conditions necessary  
20                  to effectuate the merger of Net Element and Mullen Technologies.

21  
22  
23  
24  
25                  <sup>2</sup> Plaintiff's allegations with respect to the misleading statements in the Proxy  
26                  Statement are based solely on negligence; they are not based on any allegation of  
27                  reckless or knowing conduct by or on behalf of the Individual Defendants, and they  
28                  do not allege, and do not sound in, fraud. Plaintiff specifically disclaims any  
                  allegations of, reliance upon any allegation of, or reference to any allegation of fraud,  
                  scienter, or recklessness with regard to these allegations and related claims.



1           66. The Proxy Statement included a letter to shareholders from Defendant  
2 Firer.

3           67. The Proxy Statement solicited Net Element shareholders to vote in the  
4 affirmative, stating that: **“THE NET ELEMENT BOARD RECOMMENDS**  
5 **THAT NET ELEMENT STOCKHOLDERS VOTE ‘FOR’ THE APPROVAL**  
6 **OF THE MERGER AGREEMENT PROPOSAL.”**

7           68. The Proxy Statement purportedly explained the Company’s due  
8 diligence into Mullen Technologies and touted Mullen Technologies by stating the  
9 following, in pertinent part:

10           **Strength and Strategy**

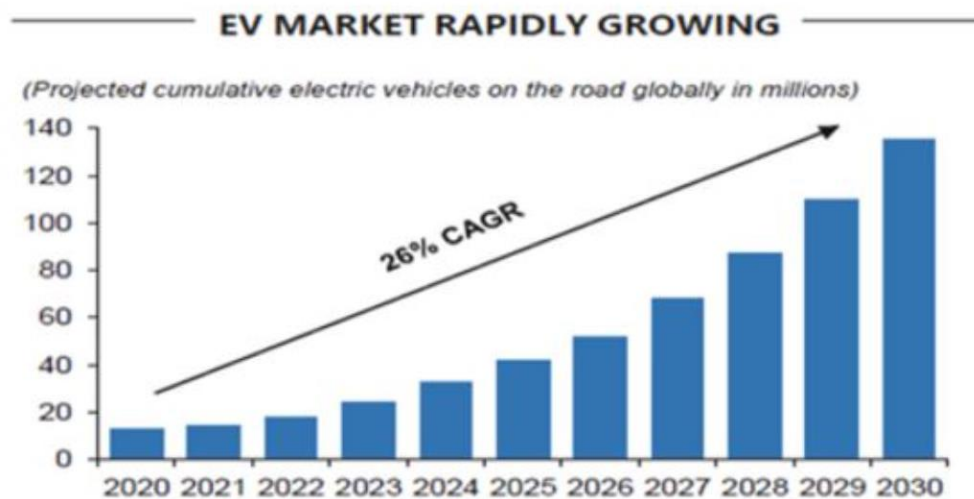
11           • *Experienced and proven team in the Electric Vehicle (“EV”) space.*  
12 The executive team at Mullen has extensive experience in the  
13 automotive OEM space. *They have a detailed understanding of the*  
14 *product development cycle from blank sheet to post launch activities*  
15 *in both the high and low volume segments* – knowing the different  
16 economies of scale which is vital to creating a high-quality profitable  
17 product. *The team brings to Mullen expertise in studio design,*  
18 *engineering, manufacturing, energy storage systems, market*  
19 *analysis, corporate development, strategic planning and investment*  
20 *strategies.*

21           • *Design.* Mullen’s platform architecture creates the opportunity for  
22 vehicles with unique aspect ratios - low roof line, wide track width,  
23 svelte body, long wheelbase, and a non-traditional battery layout.  
24 Mullen plans to bring a premium interior to the entry luxury price point  
25 in this EV segment. Recent models in the current EV segment come  
26 with premium cost, but with sub-premium interior finishes.

27           • *Unique plan.* *Mullen’s approach is a quick to market, lower capital*  
28 *investment compared to other startup EV companies.* Mullen’s plan  
includes launch in 36 months from program start while keeping  
expenditures lower by utilizing strategic partnerships in engineering  
and manufacturing. *Mullen believes its battery technology will*  
*eventually allow it to deliver our high voltage batteries under \$100*  
*per kWh and over two times the energy density of current*  
*commercially available lithium batteries. Mullen anticipates the*

*batteries used in its cars will be able to withstand extreme abuse testing, which Mullen believes should make them safer than other commercially available lithium batteries. Mullen plans to utilize a more environmentally sustainable chemistry that does not have a high content of rare precious materials.* Mullen intends to focus on CO2 reduction in those critical aspects of its organization such as manufacturing facilities, R&D facilities, work policies, allowable materials, component tooling, and supply chain and logistics.

\* \* \*



(Emphasis added.)

69. The Proxy Statement contained several risk factors relating to the Merger. These risk disclosures, however, were inadequate as they merely listed potential issues, without discussing the severe, ongoing issues at Mullen Technologies. The Proxy Statement was materially false and misleading because it failed to state Mullen Technologies' (which would become Mullen's) severe issues regarding its ability and timeline for production of vehicles, its deals with business partners such as Qiantu, its battery technology and capabilities, its ability to sell branded products, its lack of proper due diligence, and that the Dragonfly K50 was

not solely delayed due to the COVID-19 pandemic. Accordingly, the Individual Defendants used the Proxy Statement to improperly solicit shareholder approval on the conditions needed ratification for the Merger to be complete, without giving shareholders all necessary information.

*November 2021 Press Release*

70. On November 15, 2021, the Company issued a press release entitled “Important milestone in the company as the hiring ramp-up begins for skill trades and support staff” which stated the following, in pertinent part, regarding Mullen’s production ability and timeline:

Mullen Automotive, Inc. (NASDAQ: MULN) (“Mullen” or the “Company”), an emerging electric vehicle (“EV”) manufacturer, is pleased to announce today that the company closed purchase of the Tunica, Mississippi, Advanced Manufacturing and Engineering Center (AMEC) without any debt and will begin ramp-up of hiring for the initial set of skilled trades and support staff. AMEC is in Robinsonville, Mississippi, which is located in Tunica County and is approximately 40 miles south of Memphis, Tennessee.

***Mullen’s previously announced plans on Nov. 5 to build out another 1.2 million square feet of manufacturing space to support class 1 and class 2 EV cargo vans and the Mullen FIVE EV Crossover at AMEC.*** The facility currently occupies 124,000 square feet of manufacturing space. The total available land on the property is over 100 acres. On the expanded site, Mullen plans to build a body shop, a fully automated paint shop, and a general assembly shop.

Mullen’s commitment to the facility is strong and growing with hiring ramp-up now beginning for initial workers to support the initial preproduction build of class 1 and class 2 EV Cargo Vans.

“This is a milestone for Mullen,” stated David Michery, CEO and chairman of Mullen Automotive. “We now own this facility free and clear, with no associated debt or financial obligations on the property.

1 AMEC is a tremendous asset for the company, and we are proud to  
2 begin hiring and build-out of the Tunica facility.”

3 (Emphasis added.)

4  
5 71. The November 2021 Press Release is false and misleading regarding  
6 the Company’s ability and timeline for production of vehicles, its deals with business  
7 partners such as Qiantu, its battery technology and capabilities, its ability to sell  
8 branded products, its lack of proper due diligence, and that the Dragonfly K50 was  
9 not solely delayed due to the COVID-19 pandemic.

10 *February 2022 Press Release*

11 72. On February 28, 2022, the Company issued a press release entitled “EV  
12 Manufacturer Mullen Announces Progress on Solid-State Polymer Battery Pack  
13 Development” (the “February 2022 Press Release”) which stated the following, in  
14 pertinent part, regarding its battery technology and capabilities and also its deals  
15 with business partners:

16 Data collected from solid-state cell testing shows impressive results,  
17 including a range of 600-plus miles on a full charge and over 300 miles  
18 of range delivered in 18 minutes with DC fast charging. Solid-state  
19 polymer batteries are slated for the second generation of the Mullen  
20 FIVE EV Crossover.

21 ... Mullen Automotive, Inc. (NASDAQ: MULN) (“Mullen” or the  
22 “Company”), an emerging electric vehicle (“EV”) manufacturer,  
23 announces an update on Mullen’s next-generation solid-state polymer  
24 battery technology, which is a significant advancement over today’s  
25 current lithium-ion batteries.

26 ***Mullen’s testing of solid-state polymer cells reveals the potential for***  
27 ***a 150-kilowatt-hour battery pack that delivers over 600-plus miles of***  
28 ***range and highlights an 18-minute DC fast charge which can yield***  
***over 300 miles of range.*** Mullen is working towards utilizing solid-  
state polymer battery packs in its second generation Mullen FIVE EV

Crossovers, with in vehicle prototype testing set for 2025. Mullen's first-generation FIVE EV Crossover, due in late 2024, is planned to launch with traditional lithium-ion cell chemistry.

*Mullen is also conducting extensive research and development into other advanced battery technologies, including lithium-sulfur and lithium ironphosphate.* Mullen's ultimate goal is to deliver EV batteries that will surpass today's existing lithium-Ion technology and offer a host of benefits such as increased efficiency, energy density, and range while also lowering the cost, weight, thermal and environmental risks.

\* \* \*

*Mullen has recently announced a string of key partnerships with hofer powertrain, Comau, ARRK, Dürr, and DSA Systems for EV powertrain, engineering, manufacturing, vehicle production systems, and over-the-air (OTA) and vehicle system diagnostics, respectively.* The Company expects these strategic developments to play a crucial role in bringing the FIVE to market with the latest technology and in the shortest amount of time.

(Emphasis added.)

73. In the February 2022 Press Release, Defendant Michery stated the following regarding the Company's battery technology and capabilities:


"We've conducted successful testing and will begin pack level development next," said David Michery, CEO and chairman of Mullen Automotive. *"The test data collected shows an impressive outcome and future for solid-state batteries.* To sum up, we tested our 300 Ah (ampere-hour) cell which yielded 343 Ah at 4.3 volts, and *the results surpassed all expectations. We can say with almost certainty that this technology, once implemented on the Mullen FIVE, will deliver over 600 miles of range on a full charge.* The future is bright for Mullen Automotive."

(Emphasis added.)

74. The February 2021 Press Release is false and misleading regarding the Company's ability and timeline for production of vehicles, its deals with business partners such as Qiantu, its battery technology and capabilities, its ability to sell branded products, its lack of proper due diligence, and that the Dragonfly K50 was not solely delayed due to the COVID-19 pandemic.

*March 17, 2022 Tweet*

75. On March 17, 2022, the Company tweeted the following, touting its battery technology and capabilities:

#MullenAutomotive featured on Yahoo Finance Live!  ***\$MULN was identified as a standout that is doing well among falling #EV stocks due to its solid-state battery technology*** and strong domestic presence. #ElectricCars #MullenFIVE #GreenTechnology

[Image omitted.]

(Emphasis added.)

76. The March 17, 2022 Tweet is false and misleading regarding the Company's ability and timeline for production of vehicles, its battery technology and capabilities, its ability to sell branded products, without discussing the ongoing issues.

### **THE TRUTH BEGINS TO EMERGE**

77. On April 6, 2022, market analyst Hindenburg Research released a report regarding the Company entitled "Mullen Automotive: Yet Another Fast Talking EV Hustle" which detailed several alleged issues with the Company (the "Hindenburg Report").

78. The Hindenburg Report stated the following, in pertinent part, regarding Mullen's production ability and timeline:



- Mullen is an aspiring EV manufacturer that came public in late 2021 via reverse merger. It has yet to produce a sellable vehicle. ...
- Recently, Mullen shocked the market by claiming it would begin manufacturing 2 models of electric vans within months for an unnamed “major, major Fortune 500 customer”. The news sent its stock up ~35% intraday.
- The 2 electric cargo vans that Mullen claims it will be manufacturing are actually Chinese EVs rebranded with a Mullen logo. Import records show the company recently imported 2 vehicles from China, one of each model.

\* \* \*

### **Mullen’s Vehicle Offering #3: The Mullen FIVE, a Compact SUV The Company Aspires to Develop, Manufacture and Deliver by The End of 2024**

The Mullen FIVE is pitched on the company’s website as a “premium compact sport utility electric vehicle” that was “born out of [Mullen’s] love” for California. The company says it is “designed, engineered, and manufactured entirely in the USA”.

[Image omitted.]

In 2021, Mullen reported only \$3 million in R&D expenditures, which consisted “primarily” of Mullen FIVE EV show car development by “employees and consultants”.

We estimate that the company would likely need billions in capital to launch the FIVE, given that Mullen proposes to essentially build the vehicle and retool/build a manufacturing facility from the ground up in order to mass-produce the vehicle.

The company has barely made any progress toward this massive goal, acknowledging in its recent annual report that it is still negotiating with various manufacturing integration companies to assist in all aspects of design and development of a facility.



1 Nonetheless, Mullen said it hopes to complete its manufacturing facility  
2 by Q1 of 2024, and have a sellable Mullen FIVE 9 months later, by the  
3 4th quarter of 2024.

4 \* \* \*

5 **Location #4 - Tunica, MS (November 2021)**

6  
7 **The Plant Was Previously Tooled to Build a Pizza Delivery Car,  
8 But Its Prior Owners Never Managed to Sell a Single Vehicle**

9 **Mullen Originally Said The 134,700 sq/ft Facility Would Serve as  
10 A Pilot Plant. But With Its Memphis Plans Abandoned, Mullen  
11 Claims It Intends to Expand the Plant by an Additional 1.2 Million  
12 sq/ft, With No Details On How This Will Even Be Physically  
Possible**

13 According to the Mississippi State Auditor, Greentech's electric car  
14 plant closed "before it ever produced a car quoted the state auditor as  
15 saying." An article quoted the state auditor as saying:

16 "On the day when they cranked up those energy-efficient electric cars  
17 and blue smoke bellowed out, you knew that this was a sham from the  
18 very beginning."

19 \* \* \*

20 Other media, citing federal documents, said Greentech may have  
21 produced a total of 25 vehicles at the Tunica plant, but not a single one  
22 was reportedly sold.

23 **Mullen Claims Its Former Pizza Car Manufacturing Facility in  
24 Mississippi Is Stocked with State-of-the-Art Equipment and  
25 Machinery**

26 **But Pictures and Video of the Facility Show It Has Limited  
27 Equipment**  
28

***The Company's Website Features One Photo of Advanced Manufacturing Equipment. We Found That It Was a Stock Photo***

Mullen Automotive calls the Tunica, Mississippi facility Its Advanced Manufacturing Engineering center (AMEC). The company states that "AMEC is fully tooled with state-of-the-art equipment and machinery."

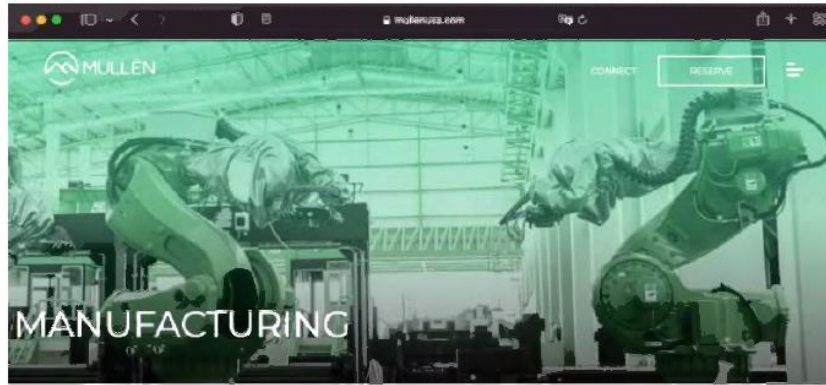
Given Greentech's limited history of production, it is not clear how much assembly line equipment was ever installed nor how much was in place when the Tunica plant was shuttered.

However, a 2017 review by the Mississippi State Auditor mentioned assembly equipment and car parts offered as loan collateral by Greentech amounting to only \$3.4 million. It is not clear if that was the total value of assembly equipment at the factory when Greentech went bankrupt.

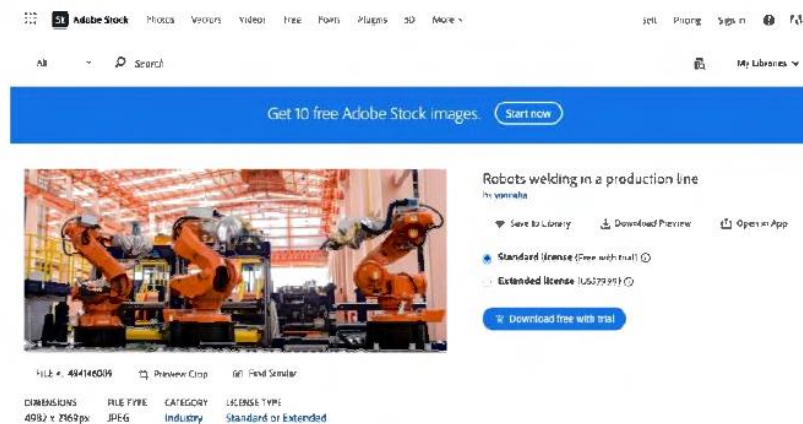
Mullen's website has a brief video that shows the interior of the factory. It looks to have storage space, tables and chairs for employees, and several lifting cranes. It does not appear from the video that there are any assembly lines, or robotic manufacturing machines.

[Image omitted.]

However, Mullen's website does feature one picture that shows advanced manufacturing robots. An online search shows that it's a stock photo, which appears to have been purchased from Adobe stock images.



Source: Mullen's website (<http://www.mullenusa.com/manufacturing>)



(Source: Adobe Stock Photos (<https://stock.adobe.com/494146009>))

(Emphasis added.)

79. The Hindenburg Report stated the following, in pertinent part, regarding Mullen's dealings with Qiantu:

- In 2019, the Mullen Dragon Fly was revealed as a supercar built by Chinese manufacturer Qiantu Motors and was meant to be rebranded and sold by Mullen starting in 2020. ***Following the reveal, Mullen immediately defaulted on its payment obligations to Qiantu, leading to termination of the agreement in October 2019.***
- Mullen continued to market the vehicle as its own. ***In legal documents, Qiantu alleges this is "an inexcusable misuse of Qiantu's own intellectual property". Despite the termination of the agreement, Mullen to this day still says the Dragon Fly is "Coming Soon" on its website and is soliciting \$1,000 reservations for the vehicle.***

1 • For its other proposed vehicle, an electric SUV, Mullen previously  
2 announced it received an order for 10,000 vehicles, representing \$500  
3 million in potential revenue. We called the South Florida contractor  
4 firm that placed the order. It currently has only around 11 vehicles, none  
of which are electric.

5 (Emphasis added.)  
6

7 80. The Hindenburg Report stated the following, in pertinent part,  
8 regarding Mullen's battery technology and capabilities:

9 • The company's stock has spiked ~316% in the past couple of months  
10 driven by retail investor euphoria over bold claims of ground-breaking  
11 technology, near term production of its EV vans, and a major as-yet-  
unnamed Fortune 500 customer.

12 • Despite only spending ~\$3 million in R&D in 2021, Mullen claims its  
13 solid-state battery technology is on track for commercialization in 18  
14 to 24 months, putting it head of every major technology and automaker  
15 in the industry who have collectively invested billions on solving the  
problem.

16 • Mullen recently press released an update on its battery testing, sending  
17 its stock soaring 145% in a day. In reality, the "news" appears to be a  
rehash of testing the company had already announced in 2020.

18 • Mullen apparently misrepresented the test results, according to the  
19 CEO of the company that performed the tests. Its CEO told us of  
20 Mullen's press release: "We never would have said that. We never did  
21 say it and certainly wouldn't have said it based on the results of testing  
that battery.

22 \* \* \*

23 With only \$360 (numbers *not* in thousands) in unrestricted cash as of  
24 December 31st, 2021, nearly \$19 million in near-term debt, \$48.4  
25 million in current liabilities and consistent operating losses, the  
26 company seemed to be teetering on insolvency right out of the gate.

27 Then, on February 28th, 2022 the company made a surprising  
28 announcement. Despite spending only \$3 million in R&D during its

entire fiscal 2021, Mullen claimed it had made progress and “significant advancement” on development of solid-state batteries, a widely regarded “holy grail” of the EV battery industry that has long-eluded tech and automaker giants such as Panasonic and Volkswagen. The stock rallied ~145% on the day.

\* \* \*

## **Part I: Mullen's Bold Claims of Being on the Cusp of Revolutionizing the Solid-State Battery Market**

### **Mullen's Claims About Its Solid-State Battery Development Would Put It Ahead of Every Major Automaker, Which Have Collectively Invested Billions into The Technology**

The auto industry is collectively investing billions into developing solid-state battery technology. Given Mullen's tiny 2021 R&D budget of \$3 million, which it acknowledged mainly went toward building show cars, we found its claims to have ground-breaking solid-state battery tech to be exceedingly implausible.

In a January 28th, 2022, interview Michery claimed Mullen was on track to commercialize solid-state polymer batteries in the next 18 to 24 months, putting it well ahead of every other major automaker working on this critical industry issue.

By comparison, solid-state technology developer QuantumScape has a cumulative \$1.2 billion in order to develop solid-state battery technology, with \$300 million coming from Volkswagen. The company said it aims to commercialize production in 2024-2025.

Other major auto companies have later targets. Toyota has thousands of patents in the solid-state battery field with its partner Panasonic, and aims for deployment in 2025. Mercedes aim to introduce their solid-state technology by 2027 and 2026 respectively, while Nissan and BMW aim to produce it by 2028 and 2030, respectively. Other major automakers like GM, Ford and Hyundai have all announced major investments or partnerships in solid-state technology without clear timelines for production.

\* \* \*

**Mullen’s Battery Claims Were Based on Technology Licensed from A Newly Formed Chinese Battery Technology Company Called Linghang Boao**

***Mullen Made Only One \$390,000 Payment Under Its Licensing Deal. It Then Announced the Importance of the Relationship Around Its Go-Public Merger, Then Promptly Then Terminated the Deal***

**Linghang Boao’s Websites No Longer Work**

In November 2019, Mullen entered into a three-year Strategic Cooperation Agreement (“SCA”) with Linghang Boao Group Ltd to co-develop a solid-state battery management system with a 480-720-mile driving range.

The Company’s total financial commitment under the agreement was \$2,196,000. On December 3, 2019, the Company paid the first installment of \$390,000. It would be the only payment made in the agreement.

Linghang Boao was registered in China in November 2018, just one year before its agreement with Mullen, according to Chinese corporate records. It shares a cell phone number with at least 99 other companies and listed its address inside a high-rise building (not a factory).

Its U.S. website just 9 months prior to its agreement with Mullen, no longer works. Nor does its Chinese website. An online slide deck about the company, uploaded 2 years ago, claims it “has been continuously breaking through in the field of power and energy storage batteries”.

Nonetheless, the agreement with Linghang Boao seemed to serve as the foundation for Mullen’s bold battery claims. During its announced go-public merger on June 15 2020 Mullen said:

“... becoming public at this time should allow us to accelerate the development of our unique battery technology which is non-flammable,



puncture proof, capable of maintaining full capabilities after 500,000 cycles, and is synthetic, requiring no mining of natural resources.”

Just months later, around September 2020, Mullen terminated the relationship, claiming that COVID was a force majeure event.

### **Our Overall Take: Mullen’s Battery Tech Claims Are Smoke And Mirrors**

*We think Mullen has severely and repeatedly misled investors on its claimed battery technology.* Its latest iteration of its battery story is an agreement with Nextech Batteries, a small Nevada-based R&D firm with about 17 employees on LinkedIn.

We spoke with Nextech’s CEO, Bill Burger, and found him to be straightforward about the stage of his technology. He explained that while they are optimistic, they are presently in the prototype and R&D phase, and aiming to secure financing in order to build out a manufacturing facility, continue testing, and move toward higher volume.

*We suspect that Mullen is once again attempting to borrow credibility from others in order to make grandiose claims to investors, pitching aggressive short-term timelines that bear little resemblance to reality.*

(Emphasis added.)

81. The Hindenburg Report stated the following, in pertinent part, regarding Mullen’s ability to sell its branded products:

- Mullen has other major production hurdles. *The company has no EPA certificates for its vans (nor any vehicle), a requirement to sell vehicles in the U.S. that often takes 12-18 months.* It has only a handful of job openings for its plant, and hasn’t begun significant hiring, according to the President of the Tunica County Chamber of Commerce. ...



1 • Mullen's plant in Tunica Mississippi was previously tooled to build a  
2 pizza delivery car, but prior owners never managed to sell a single  
vehicle.

3 • Mullen originally said the 124,700 sq/ft facility would serve as a pilot  
4 plant, but after abandoning several other plant projects, Mullen now  
5 claims it intends to expand the plant 1 Ox, or an additional 1.2 million  
sq/ft, with no details on how this will even be physically possible.

6 • *Mullen claims its former pizza car manufacturing facility in*  
7 *Mississippi is stocked with state-of-the-art equipment and machinery,*  
8 *but photos and video of the facility show it has limited equipment.*

9 • *Mullen's website features one photo of advanced manufacturing*  
10 *equipment. we found that it was a stock photo which appears to have*  
11 *been purchased from Adobe stock images.*

12 \* \* \*

13 *Despite having a limited staff of just 44 full-time employees as of 2021*  
14 *fiscal year-end, Mullen announced that it would imminently begin*  
15 *manufacturing electric vans for an unnamed Fortune 500 customer.*

The prospect of near-term revenue and a major, credible customer  
16 resulted in an immediate 35% intraday stock spike.

17 \* \* \*

18 *The Reality On The Ground Seems to Starkly Differ From Mullen's*  
19 *Claims of Imminent Production*

20 *The Company Has No EPA Certificates for Its Vans (Nor Any*  
21 *Vehicle), A Requirement to Sell Vehicles in The U.S. That Often*  
22 *Takes 12-18 Months*

23 **Furthermore, Mullen Hasn't Begun Significant Hiring for Its**  
24 **Plant, According to The President of The Tunica County Chamber**  
25 **of Commerce**

26 Even if Mullen does choose to surreptitiously import and/or assemble  
27 and rebrand Chinese vehicles, additional hurdles prevent its claimed  
28 near-term U.S. customer deliveries.

1        ***According to the EPA website neither Mullen, Tenglong nor DFSK***  
2        ***have certificates required to sell vehicles in the U.S. We also checked***  
3        ***with the EPA press office who wrote us they had received no***  
4        ***certificate applications for any Mullen vehicles.***

5        ***The EPA makes it clear these certificates are compulsory:***

6        “A Certificate of Conformity is the document that EPA issues to a  
7        vehicle manufacturer to certify that a vehicle class conforms to EPA  
8        requirements. Every class of motor vehicle introduced into commerce  
9        in the United States must have a Certificate of Conformity. Certificates  
10       are valid for only one model year of production.”

11       We consulted an Independent Commercial Importer (ICI), one of 6  
12       entities that have obtained official EPA credentials to legally import  
13       vehicles into the United States, about how long it could take Mullen to  
14       obtain certificates of conformity for Chinese passenger vehicles and  
15       light vans. A representative for the ICI told us:

16       “Cost and time to be determined - after inspection average 12 to 18  
17       months.”

18       According to experts we consulted, in order to qualify, vehicles must  
19       go through crash testing and inspections. Vehicles sold in Europe or  
20       China must often be reworked to suit the safety requirements of the U.S.  
21       market, such as adding airbags, changing belts, and modifying wheels  
22       and other components. ...

23       All vehicles sold in the U.S. must also comply with Federal Motor  
24       Vehicle Safety Standards (FMVSS) testing required by the NHTSA.  
25       Mullen has yet to disclose whether its vans have begun this process, let  
26       alone satisfied these  
27       criteria.

28       \*       \*       \*

***Given that Mullen has no apparent EPA certificates, no apparent***  
      ***FMVSS testing and no apparent adequately staffed factory, we***

1 *estimate that the company is years away from ever delivering a vehicle*  
 2 *should it actually take genuine steps to do so.*

3 \* \* \*

4 **Mullen's Vehicle Offering #2: The Mullen "DragonFly"**

5  
 6 **2019: The Mullen DragonFly Was Revealed as A Supercar Built by**  
 7 **Chinese Manufacturer Qiantu Motors, Meant to Be Rebranded**  
 8 **and Sold Through Mullen Starting in 2020**

9 Another of Mullen's key prospective product offerings is the  
 10 DragonFly, a luxury sedan supercar manufactured by Qiantu out of  
 11 China.

12 The vehicle, known as the Qiantu K50, was introduced in China in  
 13 2015. In December 2018, Mullen and Qiantu announced a cooperation  
 14 agreement to "homologate and assemble cars in the us for sales in North  
 15 America."

16 Mullen put its logo on the car and revealed it as the rebranded  
 17 "DragonFly" to the U.S. market in April 2019 at the New York  
 18 International Auto Show. ...

19 ***Following the Reveal, Mullen Immediately Defaulted on its Payment***  
 20 ***Obligations to Qiantu, Leading to Termination of the Agreement in***  
 21 ***November 2019***

22 **Yet Mullen Continued to Market the Vehicle as Its Own. In Legal**  
 23 **Documents Qiantu Alleges This is "An Inexcusable Misuse of**  
 24 **Qiantu's Own Intellectual Property"**

25 ***Behind the scenes, the partnership quickly went south. Subsequent***  
 26 ***litigation records reveal that Mullen immediately defaulted on its***  
 27 ***obligations, missing its first payment to Qiantu to cover pre-launch***  
 28 ***costs.***

With an outstanding balance owed by Mullen to Qiantu of almost \$23  
 million, Qiantu terminated the agreement in November 2019. It also

expressed surprise in its earlier Notice of Termination to Mullen that “Mullen could so badly miss the mark immediately out of the gate.”

[Image omitted.]

Rather than acknowledge the end of the deal, Mullen continued to market the partnership as if it were ongoing, Qiantu alleged in legal documents. It even continued soliciting reservations for the vehicle, calling it the “Mullen K50” on social media posts.

\* \* \*

### **Despite the Termination of The Agreement with Qiantu, Mullen Continued to Market the Offering, Including During Its Go-Public Period**

#### ***To This Day, It Still Says the DragonFly Is “Coming Soon” On Its Website and Is Soliciting \$1,000 Reservations for the Vehicle***

Despite the termination of the agreement and the ongoing dispute, the Dragon Fly has been continuously marketed by Mullen as an ongoing offering.

On June 15, 2020, 7 months after the Qiantu agreement had been terminated and had devolved into litigation, the press release announcing Mullen’s go-public merger said:

“Mullen expects to launch the Dragonfly K50, a luxury sports car, in the first half of 2021”

Chairman/CEO Michery was then quoted as saying:

“[The merger] comes on the preparation of our launch of the Dragonfly K50, which will be available in Q2 of 2021.”

***To this day, the DragonFly is featured on Mullen’s website, which is currently soliciting reservations with a \$1,000 deposit.***

[Image omitted.]

1 Other parts of the Mullen website claim the DragonFly Is “coming  
2 soon”.

3  
4 [Image omitted.]

5 In its most recent annual report, Mullen claimed to be pursuing the  
6 purchase of intellectual property rights relating to the K-50. Should it  
7 succeed, it would presumably need to figure out a way to actually  
8 manufacture the vehicle, a process we expect would not be “coming  
9 soon”.

10 ***Chinese Media Reports That Qiantu Ran into Financial Trouble***  
11 ***Around 2020 And Halted Production of the K50***

12 A closer look at the timing and subsequent collapse of the Qiantu-  
13 Mullen deal reveals a Chinese company that lacked finances to build  
14 the vehicle negotiating with an American company that didn’t have the  
15 cash to buy it.

16 (Emphasis added.)

17 82. On this news, Mullen’s stock price fell \$0.27 per share, or 10%, to  
18 close at \$2.38 per share on April 7, 2022, on unusually heavy trading volume,  
19 damaging investors.

20 83. As a result of Defendants’ wrongful acts and omissions, and the  
21 decline in the market value of the Company’s securities, Plaintiff and other Class  
22 members have suffered significant losses and damages.

23 **DAMAGES TO MULLEN**

24 84. As a direct and proximate result of the Individual Defendants’ conduct,  
25 Mullen has expended and will continue to expend significant sums of money.

26 85. Such expenditures include, but are not limited to, legal fees associated  
27 with the aforementioned Consolidated Securities Class Action filed against the  
28

1 Company for violations of the federal securities laws. Mullen will incur additional  
2 expenditures and economic harm due to, among other things, amounts paid to  
3 outside lawyers, accountants, and investigators in connection with internal  
4 investigations, and payments associated with the aforementioned issues.

5 86. As a direct and proximate result of the Individual Defendants' conduct,  
6 Mullen has suffered and will continue to suffer a loss of reputation and goodwill,  
7 and a "liar's discount" that will plague the Company's stock in the future due to the  
8 Company's actions and misrepresentations and the Individual Defendants' breaches  
9 of fiduciary duties.

#### 10 **DERIVATIVE ALLEGATIONS**

11 87. Plaintiff brings this action derivatively and for the benefit of Mullen to  
12 redress injuries suffered, and to be suffered, as a result of the Individual Defendants'  
13 breaches of their fiduciary duties as directors and/or officers of Mullen, gross  
14 mismanagement, abuse of control, waste of corporate assets, and violations of the  
15 Exchange Act.

16 88. Mullen is named solely as a nominal party in this action. This is not a  
17 collusive action to confer jurisdiction on this Court that it would not otherwise have.

18 89. Plaintiff is, and at relevant times has been, an Mullen shareholder.  
19 Plaintiff will adequately and fairly represent the interests of Mullen in enforcing  
20 and prosecuting its rights, and, to that end, has retained competent counsel,  
21 experienced in derivative litigation, to enforce and prosecute this action.

#### 22 **DEMAND FUTILITY ALLEGATIONS**

23 90. Plaintiff incorporates by reference and re-alleges each and every  
24 allegation stated above as if fully set forth herein.

25 91. A pre-suit demand on the Board of Mullen is futile and, therefore,  
26 excused. At the time of filing of this action, the Board consists of the following  
27  
28

1 seven individuals: Defendants Michery, Novoa, Winter, Puckett, Betor, and Miltner  
2 (collectively, the “Current Director Defendants”), along with Relevant Party John  
3 K. Andersen<sup>3</sup>. Plaintiff needs only to allege demand futility as to four of the seven  
4 members that are on the Board at the time this action is commenced.

5 92. Defendant Michery has served as the Chairman of the Board, President  
6 and Chief Executive Officer of the Company since the closing of the merger with  
7 Net Element, Inc. on November 5, 2021, and held those same positions at Mullen  
8 Technologies, Inc. since its inception in 2018. His automotive experience began  
9 with the acquisition of Mullen Motor Company in 2012.

10 93. Defendant Michery is not disinterested or independent, and therefore,  
11 is incapable of considering demand because Defendant Michery (as CEO) is an  
12 employee of the Company who derived substantially all of his income from his  
13 employment with the Company, making him not independent. As such, Defendant  
14 Michery cannot independently consider any demand to sue himself for breaching  
15 his fiduciary duties to the Company, because that would expose him to liability and  
16 threaten his livelihood. This lack of independence and financial benefits received  
17 by Defendant Michery renders him incapable of impartially considering a demand  
18 to commence and vigorously prosecute this action.

19 94. Defendant Michery is also a defendant in the Consolidated Securities  
20 Class Action. Defendant Michery is not independent from Defendants Betor, New  
21 and Puckett, because they comprise the Mullen Compensation Committee and are  
22 responsible for evaluating and determining the compensation of the CEO  
23 (Defendant Michery). Because of his status as an inside director, and the  
24

---

25  
26  
27  
28 <sup>3</sup> On September 16, 2022, the Board of Directors of Mullen Automotive Inc.  
appointed John K. Anderson as a Director, effective as of September 19, 2022.



1 concomitant substantial compensation he receives, Defendant Michery could not  
2 consider a demand adverse to the other Director Defendants serving on the  
3 Compensation Committee who are responsible for his financial future. *See, e.g.,*  
4 *Rales v. Blasband*, 634 A.2d 927, 937 (Del. 1993); *Steiner v. Meyerson*, 1995 WL  
5 441999, at \*10 (Del. Ch. July 19, 1995); *In re The Student Loan Corp. Derivative*  
6 *Litig.*, 2002 WL 75479, at \*3 (Del. Ch. Jan. 8, 2002); *In re Veeco Instruments, Inc.*  
7 *Sec. Litig.*, 434 F. Supp. 2d 267, 275 (S.D.N.Y. 2006) (applying Delaware law) (fact  
8 of director's deriving his principal income from employment by the corporation  
9 makes it improbable that he could perform his fiduciary duties without bring  
10 influenced by his overriding personal interest) (citing *In re General Motors*  
11 *(Hughes) S'holder Litig.*, 2005 WL 1089021, at \*8 (Del. Ch. May 4, 2005)).

12  
13 95. Defendant Michery has also provided loans to the Company. The  
14 outstanding balances for these loans as of March 31, 2021 and September 30, 2020  
15 are \$86,404 and \$172,791, respectively.

16 96. Defendant Michery, as the Chair of the Board, was responsible for the  
17 Company's operations, internal controls, and false and misleading statements and  
18 omissions during the Relevant Period. Defendant Michery received, and will  
19 continue to receive, handsome compensation for serving on Mullen's Board.  
20 Defendant Michery conducted little, if any, oversight of the Company's  
21 engagement in the scheme to make false and misleading statements, consciously  
22 disregarded his duties to monitor such controls over reporting and engagement in  
23 the schemes, and consciously disregarded his duties to protect corporate assets. In  
24 complete abdication of his fiduciary duties, Defendant Michery either participated  
25 in or was recklessly unaware of the scheme to hide the conditions and abilities of  
26 Mullen. As a result, Defendant Michery breached his fiduciary duties. For these  
27  
28

1 reasons, Defendant Michery faces a substantial likelihood of liability, and demand  
2 upon him is futile and, therefore, excused.

3 97. Defendant Novoa and the Company entered into a one-year Consulting  
4 Agreement on January 12, 2022. Defendant Novoa was also issued an aggregate of  
5 255,500 shares of Common Stock pursuant to the terms of the Consulting  
6 Agreement. Defendant Novoa is not disinterested or independent and is incapable  
7 of considering demand because Novoa is a paid consultant of the Company and  
8 derives substantial income from his employment with the Company, making him  
9 not independent.

10 98. Defendant Novoa received, and will continue to receive, handsome  
11 compensation for serving on Mullen's Board. Defendant Novoa conducted little, if  
12 any, oversight of the Company's engagement in the scheme to make false and  
13 misleading statements, consciously disregarded his duties to monitor such controls  
14 over reporting and engagement in the schemes, and consciously disregarded his  
15 duties to protect corporate assets. In complete abdication of his fiduciary duties,  
16 Defendant Novoa either participated in or was recklessly unaware of the scheme to  
17 hide the conditions and abilities of Mullen. As a result, Defendant Novoa breached  
18 his fiduciary duties. For these reasons, Defendant Novoa faces a substantial  
19 likelihood of liability, and demand upon him is futile and, therefore, excused.

20 99. Defendant Winter has served as Director of the Company since the  
21 closing of the Merger and served as a Director of Mullen Technologies since 2018.  
22 Defendant Winter has been an integral part of Mullen since inception.

23 100. Defendant Winter and the Company entered into a Consulting  
24 Agreement on October 26, 2021 whereby the Company has agreed to pay Winter  
25 \$60,000 for the period from October 1, 2021 to September 30, 2022 for her services  
26 as corporate secretary and director. Defendant Winter is not disinterested or  
27  
28

1 independent and is incapable of considering demand because Winter is a paid  
2 consultant of the Company and derives substantial income from her employment  
3 with the Company, making her not independent.

4 101. Defendant Winter currently serves as the Secretary of the Company  
5 and Board of Directors. Formerly, Defendant Winter was the Vice President of  
6 Operations for Mullen Technologies since 2014.

7 102. Defendant Winter received, and will continue to receive, handsome  
8 compensation for serving on Mullen's Board. Defendant Winter conducted little, if  
9 any, oversight of the Company's engagement in the scheme to make false and  
10 misleading statements, consciously disregarded his duties to monitor such controls  
11 over reporting and engagement in the schemes, and consciously disregarded her  
12 duties to protect corporate assets. In complete abdication of her fiduciary duties,  
13 Defendant Winter either participated in or was recklessly unaware of the scheme to  
14 hide the conditions and abilities of Mullen. As a result, Defendant Winter breached  
15 her fiduciary duties. For these reasons, Defendant Winter faces a substantial  
16 likelihood of liability, and demand upon him is futile and, therefore, excused.

17 103. Defendant Puckett has served as a Director of the Company since the  
18 closing of the Merger. Defendant Puckett has served on Mullen Technologies'  
19 Board since 2018, serving as the Audit Committee Chair during that time.  
20 Previously, he served as the Chief Financial Officer of Mullen Technologies from  
21 2012 to 2018.

22 104. Defendant Puckett received, and will continue to receive, handsome  
23 compensation for serving on Mullen's Board, sitting on the Audit Committee,  
24 Compensation Committee, and Nominating and Corporate Governance Committee.  
25 Defendant Puckett conducted little, if any, oversight of the Company's engagement  
26 in the scheme to make false and misleading statements, consciously disregarded his  
27  
28

1 duties to monitor such controls over reporting and engagement in the schemes, and  
2 consciously disregarded his duties to protect corporate assets. In complete  
3 abdication of his fiduciary duties, Defendant Puckett either participated in or was  
4 recklessly unaware of the scheme to hide the conditions and abilities of Mullen. As  
5 a result, Defendant Puckett breached his fiduciary duties. For these reasons,  
6 Defendant Puckett faces a substantial likelihood of liability, and demand upon him  
7 is futile and, therefore, excused.

8 105. Defendant Betor has served as a Director of the Company since the  
9 closing of the Merger and served as a Director of Mullen Technologies since 2018.

10 106. Defendant Betor received, and will continue to receive, handsome  
11 compensation for serving on Mullen's Board, sitting on the Audit Committee,  
12 Compensation Committee, and Nominating and Corporate Governance Committee.  
13 Defendant Betor conducted little, if any, oversight of the Company's engagement  
14 in the scheme to make false and misleading statements, consciously disregarded his  
15 duties to monitor such controls over reporting and engagement in the schemes, and  
16 consciously disregarded his duties to protect corporate assets. In complete  
17 abdication of his fiduciary duties, Defendant Betor either participated in or was  
18 recklessly unaware of the scheme to hide the conditions and abilities of Mullen. As  
19 a result, Defendant Betor breached his fiduciary duties. For these reasons,  
20 Defendant Betor faces a substantial likelihood of liability, and demand upon him is  
21 futile and, therefore, excused.

22 107. Defendant Miltner has served as a Director of the Company since the  
23 closing of the Merger.

24 108. Defendant Miltner received, and will continue to receive, handsome  
25 compensation for serving on Mullen's Board, and sitting on the Nominating and  
26 Corporate Governance Committee. Defendant Miltner conducted little, if any,  
27  
28

1 oversight of the Company's engagement in the scheme to make false and  
2 misleading statements, consciously disregarded his duties to monitor such controls  
3 over reporting and engagement in the schemes, and consciously disregarded his  
4 duties to protect corporate assets. In complete abdication of his fiduciary duties,  
5 Defendant Miltner either participated in or was recklessly unaware of the scheme  
6 to hide the conditions and abilities of Mullen. As a result, Defendant Miltner  
7 breached his fiduciary duties. For these reasons, Defendant Miltner faces a  
8 substantial likelihood of liability, and demand upon him is futile and, therefore,  
9 excused

10  
11 109. Further, as a result of the prior business relationships at Mullen  
12 Technologies among Defendants Michery, Winter, Puckett, and Betor, they are  
13 unable to evaluate a demand with independence, and therefore, demand is excused.

14 110. Professional or personal friendships raises a reasonable doubt whether  
15 these directors can appropriately consider demand. Likewise, substantial past or  
16 current relationships of a business nature may, if material to the director, give rise  
17 to a pleading-stage inference of beholdenness.

18 111. Demand is excused as to all of the Current Director Defendants  
19 because each one of them faces, individually and collectively, a substantial  
20 likelihood of liability as a result of the aforementioned conduct, which renders them  
21 unable to impartially investigate the conduct and decide whether to pursue action  
22 against themselves and the other perpetrators of the conduct.

23 112. In complete abdication of their fiduciary duties, all of the Director  
24 Defendants either participated in or were recklessly unaware of the conduct to make  
25 the Company appear more attractive to investors, and to increase the Company  
26 stock price. As a result, the Director Defendants breached their fiduciary duties.

1 Thus, the Current Director Defendants face a substantial likelihood of liability, and  
2 demand upon them is futile.

3 113. The Director Defendants, as members of the Board and employees as  
4 applicable, were and/or are subject to the Code of Ethics. The Code of Ethics  
5 required the Director Defendants to adhere to the Company's standards of business  
6 conduct. The Director Defendants did not comply with the requirements of the Code  
7 of Ethics. The Director Defendants violated the Code of Ethics. Because the Current  
8 Director Defendants violated the Code of Ethics, they face a substantial likelihood  
9 of liability for breaching their fiduciary duties, and therefore demand upon them is  
10 futile.

11 114. Furthermore, demand in this case is excused because the Current  
12 Director Defendants, who are named as defendants in this action and who may be  
13 the subject of investigations of the Consolidated Securities Class Action and even  
14 federal and state law enforcement agents or others, control the Company and are  
15 beholden to each other.

16 115. Members of the Board have (often longstanding) business and personal  
17 relationships with each other that precludes them from acting independently and in  
18 the best interests of the Company and the shareholders. These conflicts of interest  
19 precluded the Board from adequately monitoring the Company's operations and  
20 potential combinations and calling into question the Individual Defendants'  
21 conduct. Thus, any demand on the Current Director Defendants would be futile.

22 116. Mullen has been and will continue to be exposed to significant losses  
23 due to the wrongdoing complained of herein, yet the Current Director Defendants  
24 have not filed any lawsuits against themselves or others who were responsible for  
25 that wrongful conduct to attempt to recover for Mullen any part of the damages  
26  
27  
28

1 Mullen suffered and will continue to suffer thereby. Thus, any demand on the  
2 Current Director Defendants would be futile.

3 117. The Director Defendants' conduct described herein and summarized  
4 above could not have been the product of legitimate business judgments as it was  
5 based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of  
6 the Director Defendants can claim exculpation from their violations of duty  
7 pursuant to the Company's charter (to the extent such a provision exists). As the  
8 Current Director Defendants face a substantial likelihood of liability, they are self-  
9 interested in the actions and inactions challenged herein and cannot be presumed to  
10 be capable of exercising independent and disinterested judgment about whether to  
11 pursue this action on behalf of the shareholders of the Company. Accordingly,  
12 demand is excused as being futile.  
13

14 118. The acts complained of herein constitute violations of fiduciary duties  
15 owed by Mullen's officers and directors and these acts are incapable of ratification.

16 119. The Director Defendants may also be protected against personal  
17 liability for their acts of mismanagement and breaches of fiduciary duty alleged  
18 herein by directors' and officers' liability insurance if they caused the Company to  
19 purchase it for their protection with corporate funds, *i.e.*, monies belonging to the  
20 stockholders of Mullen. If there is a directors' and officers' liability insurance  
21 policy covering the Director Defendants, it may contain provisions that eliminate  
22 coverage for any action brought directly by the Company against the Director  
23 Defendants, known as, among other things, the "insured-versus-insured exclusion."  
24 As a result, if the Director Defendants were to sue themselves or certain of the  
25 officers of Mullen, there would be no directors' and officers' insurance protection.  
26 Accordingly, the Director Defendants cannot be expected to bring such a suit. On  
27 the other hand, if the suit is brought derivatively, as this action is brought, such  
28



1 insurance coverage, if such an insurance policy exists, will provide a basis for the  
2 Company to effectuate a recovery. Thus, demand on the Current Director  
3 Defendants is futile and, therefore, excused.

4 120. If there is no directors' and officers' liability insurance, then the  
5 Director Defendants will not cause Mullen to sue the Individual Defendants named  
6 herein, since, if they did, they would face a large uninsured individual liability.  
7 Accordingly, demand is futile in that event, as well.

8 121. Thus, for the reasons set forth above, all of the Director Defendants,  
9 and, if not all of them, certainly a majority of the Current Director Defendants,  
10 cannot consider a demand with disinterestedness and independence. Consequently,  
11 a demand upon the Current Director Defendants is excused as futile.

12 122. Overall, the Company has and will most likely expend substantial  
13 resources on internal investigations and defending the Consolidated Securities  
14 Class Action and any other related actions. The Company will also lose substantial  
15 sums of money due, among other things, related legal and regulatory costs.  
16 Moreover, the Company's reputation has been severely damaged. The Company  
17 has also wasted a substantial amount of money in compensating the Individual  
18 Defendants as directors and officers. Mullen's prospect of raising equity in the  
19 future is weakened. All of this substantial damage stems proximately from the  
20 Individual Defendants' conscious and willful breaches of their fiduciary duties,  
21 abuse of control, waste of corporate assets, violations of Section 14(a) of the  
22 Exchange Act, and other malfeasance.  
23

## 24 **FIRST CLAIM**

### 25 **Against the Director Defendants for Breach of Fiduciary Duties**

26 123. Plaintiff repeats and realleges each and every allegation contained  
27 above as if fully set forth herein.  
28

1           124. Each Individual Defendant owed to the Company the duty to exercise  
2 candor, good faith, and loyalty in the management and administration of Mullen's  
3 business and affairs.

4           125. Each of the Individual Defendants violated and breached his fiduciary  
5 duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

6           126. The Individual Defendants' conduct set forth herein was due to their  
7 intentional, reckless, or negligent breach of the fiduciary duties they owed to the  
8 Company, as alleged herein. The Individual Defendants intentionally, recklessly, or  
9 negligently breached or disregarded their fiduciary duties to protect the rights and  
10 interests of Mullen.

11           127. In breach of their fiduciary duties owed to Mullen, the Individual  
12 Defendants willfully participated in misrepresentation of the Company's business  
13 operations and prospects, failed to correct the Company's public statements, and  
14 failed to properly oversee Mullen's business, rendering them personally liable to  
15 the Company for breaching their fiduciary duties.

16           128. The Individual Defendants had actual or constructive knowledge that  
17 that they had caused the Company to improperly misrepresent its business  
18 operations, potential combination, and prospects and they failed to correct the  
19 Company's public statements. Defendants had actual knowledge of the  
20 misrepresentations and omissions of material facts set forth herein, or acted with  
21 reckless disregard for the truth, in that they failed to ascertain and to disclose such  
22 facts, even though such facts were available to them. Such material  
23 misrepresentations and omissions were committed knowingly or recklessly and for  
24 the purpose and effect of artificially inflating the price of Mullen's securities.

25           129. The Individual Defendants had actual or constructive knowledge that  
26 that they had caused the Company to make material misrepresentations and  
27  
28

1 omissions and to fail to maintain adequate internal controls. Defendants had actual  
2 knowledge of the issues at Mullen Technologies and Mullen. Such improper  
3 conduct was committed knowingly or recklessly and for the purpose and effect of  
4 artificially inflating the price of Mullen's securities.

5 130. These actions were not a good-faith exercise of prudent business  
6 judgment to protect and promote the Company's corporate interests.

7 131. As a direct and proximate result of the Individual Defendants'  
8 breaches of their fiduciary obligations, Mullen has sustained and continues to  
9 sustain significant damages. As a result of the misconduct alleged herein, Individual  
10 Defendants are liable to the Company.

## 11 **SECOND CLAIM**

### 12 **Against the Director Defendants for Abuse of Control**

13 132. Plaintiff repeats and realleges each and every allegation contained in  
14 the foregoing paragraphs as if fully set forth herein.

15 133. The Individual Defendants' misconduct alleged herein constituted an  
16 abuse of their ability to control and influence Mullen, for which they are legally  
17 responsible.

18 134. As a direct and proximate result of the Individual Defendants' abuse  
19 of control, Mullen has sustained significant damages. As a direct and proximate  
20 result of the Individual Defendants' breaches of their fiduciary obligations of  
21 candor, good faith, and loyalty, Mullen has sustained and continues to sustain  
22 significant damages. As a result of the misconduct alleged herein, the Individual  
23 Defendants are liable to the Company.

## 24 **THIRD CLAIM**

### 25 **Against the Director Defendants for Gross Mismanagement**

1           135. Plaintiff repeats and realleges each and every allegation contained  
2 above as if fully set forth herein.

3           136. By their actions alleged herein, the Individual Defendants, either  
4 directly or through aiding and abetting, abandoned and abdicated their  
5 responsibilities and fiduciary duties with regard to prudently managing the assets  
6 and business of Mullen in a manner consistent with the operations of a publicly-  
7 held corporation.

8           137. As a direct and proximate result of the Individual Defendants' gross  
9 mismanagement and breaches of duty alleged herein, Mullen has sustained and will  
10 continue to sustain significant damages.

11           138. As a result of the misconduct and breaches of duty alleged herein, the  
12 Individual Defendants are liable to the Company.

13           139. Plaintiff, on behalf of Mullen, has no adequate remedy at law.  
14

15                           **FOURTH CLAIM**

16                   **Against the Director Defendants for Waste of Corporate Assets**

17           140. Plaintiff repeats and realleges each and every allegation contained  
18 above as if fully set forth herein.

19           141. As a result of the foregoing, and by failing to properly consider the  
20 interests of the Company and its public shareholders, Defendants have caused the  
21 Company to waste valuable corporate assets by failing to disclose: (i) the  
22 Company's disclosure controls and procedures were not effective; and (ii) as a  
23 result of the foregoing, the Company's public statements were materially false and  
24 misleading at all relevant times

25           142. As a further result of the foregoing, the Company will incur many  
26 millions of dollars of legal liability and/or costs to defend unlawful actions, to  
27  
28

engage in internal investigations, and to lose financing from investors and business from future customers who no longer trust the Company.

143. As a result of the waste of corporate assets, the Individual Defendants are each liable to the Company.

144. Plaintiff, on behalf of Mullen, has no adequate remedy at law.

### **FIFTH CLAIM**

#### **Against the Individual Defendants for Violations of Section 14(a) of the Exchange Act**

145. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

146. The Section 14(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants. The Section 14(a) claims alleged herein do not allege and do not sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these non-fraud claims.

147. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his or her name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l].”

148. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain “any statement which, at the time

1 and in the light of the circumstances under which it is made, is false or misleading  
 2 with respect to any material fact, or which omits to state any material fact necessary  
 3 in order to make the statements therein not false or misleading.” 17 C.F.R.  
 4 §240.14a-9.

5 149. Under the direction and watch of the Individual Defendant, the Proxy  
 6 Statement failed to disclose, among other things, issues with Mullen Technologies  
 7 regarding its ability and timeline for production of vehicles, its deals with business  
 8 partners such as Qiantu, its battery technology and capabilities, its ability to sell  
 9 branded products, its due diligence into Mullen Technologies, and that the  
 10 Dragonfly K50 was not solely delayed due to the COVID-19 pandemic.

11 150. As a result of the foregoing, the Company’s public statements were  
 12 materially false and misleading at all relevant times.

13 151. In the exercise of reasonable care, the Individual Defendants should  
 14 have known that by misrepresenting or failing to disclose the foregoing material  
 15 facts, the statements contained in the Proxy Statement were materially false and  
 16 misleading. The misrepresentations and omissions were material to Plaintiff in  
 17 voting on the matters set forth for shareholder determination in the Proxy Statement,  
 18 including, ratification of the conditions to lead to the consummation of the Merger.

19 152. The Company was damaged as a result of the Individual Defendants’  
 20 material misrepresentations and omissions in the Proxy Statement.

21 153. Plaintiff on behalf of Mullen has no adequate remedy at law.

### 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff demands judgment in the Company’s favor against  
 24 all Individual Defendants as follows:

25 A. Declaring that Plaintiff may maintain this action on behalf of Mullen,  
 26 and that Plaintiff is an adequate representative of the Company;  
 27  
 28

1           B.     Declaring that the Individual Defendants have breached and/or aided  
2 and abetted the breach of their fiduciary duties to Mullen;

3           C.     Determining and awarding to Mullen the damages sustained by it as a  
4 result of the violations set forth above from each of the Individual Defendants,  
5 jointly and severally, together with pre-judgment and post-judgment interest  
6 thereon;

7           D.     Directing Mullen and the Individual Defendants to take all necessary  
8 actions to reform and improve its corporate governance and internal procedures to  
9 comply with applicable laws and to protect Mullen and its shareholders from a  
10 repeat of the damaging events described herein, including, but not limited to, putting  
11 forward for shareholder vote the following resolutions for amendments to the  
12 Company's Bylaws or Articles of Incorporation and the following actions as may  
13 be necessary to ensure proper corporate governance policies:  
14

15               1.     a proposal to strengthen the Board's supervision of operations  
16 and develop and implement procedures for greater shareholder input into the  
17 policies and guidelines of the Board;

18               2.     a provision to permit the shareholders of Mullen to nominate at  
19 least four candidates for election to the Board;

20               3.     a proposal to ensure the establishment of effective oversight of  
21 compliance with applicable laws, rules, and regulations; and

22               5.     a proposal to increase the diversity of the Board, including  
23 diversity of gender and technical background.

24           E.     Awarding Mullen restitution from Individual Defendants, and each of  
25 them;

26           F.     Awarding Plaintiff the costs and disbursements of this action,  
27 including reasonable attorneys' and experts' fees, costs, and expenses; and  
28



1 G. Granting such other and further relief as the Court may deem just and  
2 proper.

3 **DEMAND FOR TRIAL BY JURY**

4 Plaintiff hereby demands a trial by jury.

5  
6 Dated: September 30, 2022

Respectfully submitted,

7  
8 **THE ROSEN LAW FIRM, P.A.**

9 /s/Laurence M. Rosen

10 Laurence M. Rosen, Esq. (SBN 219683)

11 355 S. Grand Avenue, Suite 2450

12 Los Angeles, CA 90071

13 Telephone: (213) 785-2610

14 Facsimile: (213) 226-4684

Email: lrosen@rosenlegal.com

15 *Counsel for Plaintiff*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I, Hany Morsy am a plaintiff in the within action. I have reviewed the allegations made in this shareholder derivative complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9/30/2022 day of September, 2022.



87F56175E8044E5...

Hany Morsy